

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

QUALCOMM Incorporated

Petition for Declaratory Ruling

WT Docket No. 05-7

To: Chief, Mobility Division, Wireless Telecommunications Bureau

**COMMENTS OF
PAPPAS SOUTHERN CALIFORNIA LICENSE, LLC**

SUMMARY

Pappas Southern California License, LLC (“Pappas”) strongly opposes QUALCOMM Incorporated’s (“QUALCOMM’s”) Petition for Declaratory Ruling (the “Petition”). Pappas is the licensee of primary analog television station KAZA-TV, Avalon, California, Channel 54, and would be directly and adversely impacted by significant adjacent-channel interference from QUALCOMM’s new “MediaFLO” service, which intends to operate multiple high-power transmitters within KAZA-TV’s protected Grade B service area. As demonstrated in Pappas’s Comments, the MediaFLO service is likely to cause very significant degradation of service to potentially hundreds of thousands of viewers.

QUALCOMM’s Petition seeks unprecedented and inappropriate relief, including requesting the Commission to authorize interference from MediaFLO to up to 2% of the population within a television station’s service area. Pappas strenuously opposes QUALCOMM’S requested interference standard: in a market of the size of Los Angeles, a 2% interference standard would likely result in interference affecting over 310,000 viewers. Commission precedent has never permitted anything remotely approaching that extent of interference, and doing so would disenfranchise a large population, particularly those who depend on over-the-air broadcasting for their news and entertainment, and – in the case of KAZA-TV’s Spanish-language programming – an exclusively minority group.

Pappas also opposes QUALCOMM’s request that OET-69 be used to demonstrate compliance with the TV/DTV interference protection criteria of Section 27.60 of the Commission’s Rules. The Commission developed OET-69 in an entirely different and limited

context that is inapplicable to the interference MediaFLO will cause. Particularly in view of the fact that OET-69 does not account for interference to the over-the-air reception of adjacent-channel broadcast signals at discrete cable television headend locations, and the resulting distribution by cable of a degraded signal to hundreds or thousands of subscribers residing many miles away from an OET-69-predicted zone of interference, OET-69 is simply not a useful tool in this context. Further, Pappas asks the Commission to deny QUALCOMM's request to establish a "streamlined" processing procedure for OET-69 showings. The Commission must preserve a case-by-case analysis, consistent with precedent requiring that critical, free over-the-air broadcast service be protected from harmful interference.

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I. BACKGROUND AND OVERVIEW

Pappas Southern California License, LLC ("Pappas"), by counsel, hereby respectfully submits these Comments opposing the Petition for Declaratory Ruling (the "Petition") filed by QUALCOMM Incorporated ("QUALCOMM") on January 10, 2005.¹

¹ See *In the Matter of QUALCOMM Incorporated Petition for Declaratory Ruling that OET-69 is Acceptable to Demonstrate Compliance with Section 27.60*, WT Docket No. 05-7 (filed Jan. 10, 2005). These comments are timely filed, in accordance with the revised comment deadline set forth in the Commission's Order in this docket, DA 05-419, adopted on February 14, 2005 and released on February 15, 2005, wherein the Commission granted the petition of the National Association of Broadcasters and the Association for Maximum Service Television, Inc. for an extension of time. The Order set a new deadline for comments to be submitted by March 10, 2005. See *In the Matter of Qualcomm Incorporated Petition for Declaratory Ruling*, Order, DA 05-419, WT Docket No. 05-7 (rel. Feb. 15, 2005).

Pappas is the licensee of primary analog television station KAZA-TV, Avalon, California, Facility Identification Number 29234, operating on NTSC Channel 54 (710-716 MHz). KAZA-TV, an affiliate of the emerging Azteca America network, broadcasts popular Spanish-language programming, serving the needs of the large Spanish-speaking population in the Los Angeles, California Designated Market Area (“DMA”). KAZA-TV would be directly and adversely impacted by significant adjacent-channel interference from QUALCOMM’s proposed new so-called “MediaFLO” service, which would operate in the lower 700 MHz band specifically on Block D frequencies, comprising Television Broadcast Channel 55,² with multiple high power (50 kW effective radiated power, or “ERP”) transmitters³ located in the heavily populated DMA of Los Angeles. Because the MediaFLO service is intended to operate at such high power from several transmitter sites within Los Angeles, it is likely to cause very significant degradation of service to potentially hundreds of thousands of Hispanic television viewers.

QUALCOMM’s Petition requests, among other actions, that the Commission permit interference to up to 2% of the population within a television station’s service area.⁴ Pappas strenuously opposes QUALCOMM’S requested interference standard. The 2% interference requested by QUALCOMM would result in harmful interference to unprecedented numbers of Spanish-language television viewers, and would be entirely unwarranted: in a

² Petition, at p. 4.

³ *Id.*, at p. 15.

⁴ *Id.*, at p. 18.

market of the size of Los Angeles, a 2% interference standard would likely result in interference affecting over 310,000 viewers, using the population within KAZA-TV's predicted Grade B contour as a guide.⁵

Pappas also opposes QUALCOMM's request that OET-69⁶ be used to demonstrate compliance with the TV/DTV interference protection criteria of Section 27.60 of the Commission's Rules. It is an inappropriate attempt to apply a standard developed in an *entirely different and highly particular context* to interference that would be generated from *several* high-power transmitter sites scattered *within* the television station's protected service area. Moreover, at best, only one of Qualcomm's proposed transmitters could be co-located with KAZA-TV's transmitter site. The other high-power transmitters proposed by QUALCOMM⁷ – as well as additional ones Qualcomm may subsequently add – would perforce create obvious interference impact zones in potentially densely populated areas. Multiple adjacent-channel transmitter sites inside a television's station's protected service area are unprecedented in the television band.

Further, Pappas strongly urges the Commission to deny QUALCOMM's equally unprecedented request to establish a "streamlined" processing procedure for OET-69 showings. To the contrary, in lieu of the very real interference QUALCOMM's service will cause, the Commission should establish a procedure for notification by QUALCOMM to potentially-

⁵ See Engineering Statement of Khanna & Guill, Inc. ("Khanna Statement") dated March 9, 2005, at 3, attached hereto as Exhibit A.

⁶ See Federal Communications Commission Office of Engineering and Technology Bulletin No. 69, "Longley-Rice Methodology for Evaluating TV Coverage and Interference," Public Notice, DA 04-319 (rel. Feb. 6, 2004).

⁷ See PCCI Engineering Exhibit to Petition at 1.

affected broadcast stations in areas in which the MediaFLO service is to be launched, followed by a period of bilateral discussions and negotiations, if necessary, between QUALCOMM and the affected television stations, in order to permit the parties to explore whether they can resolve interference issues. If no such amicable resolution were to be achieved, QUALCOMM could proceed to submit its application and request for waiver of Section 27.60, and the affected broadcast stations would have an opportunity to petition the Commission to deny the application and waiver request. This procedure, as articulated more fully below, would preserve Commission resources, while protecting incumbent broadcasters and their viewers, consistent with longstanding Commission precedent.

QUALCOMM's Petition cavalierly suggests that a 2% interference cap would result in only minimal actual interference, because most viewers subscribe to cable television, rather than receive their television signals over-the-air. However, QUALCOMM's presumptuous approach ignores the fact that in certain affected markets, such as in Los Angeles, a significant portion of the population are Spanish-speakers or otherwise use English as a second language. Many of these individuals tend to be over-represented at the lower end of the socio-economic scale and do not have the disposable income to subscribe to cable television. In fact, according to A.C. Nielsen, subscription to cable services among Hispanic households is only 45% in the Los Angeles DMA.⁸ That is certainly true for KAZA-TV's viewers, since KAZA-TV broadcasts entirely in the Spanish language. These viewers rely on over-the-air broadcast

⁸ See Nielsen Media Research, "Top 40 DMA's Ranked by Hispanic TV Households" (Nov. 2004) (attached as Exhibit B).

stations, because they cannot afford the luxury of a costly subscription television service. However novel the MediaFLO service may be for those who can afford it, interference caused by the MediaFLO service would deprive an unprecedented number of viewers of basic analog broadcast television. This result directly contravenes Commission precedent, as described more fully below. QUALCOMM's requested interference standard has no basis in Commission precedent, would cause harmful interference to several hundred thousand existing analog viewers, would disenfranchise a large, primarily-minority population, and should be denied.

II. THE COMMISSION SHOULD REJECT QUALCOMM'S SUGGESTED 2% INTERFERENCE STANDARD AS WHOLLY UNPRECEDENTED AND INAPPROPRIATE TO THE SITUATION AT HAND

A. The Commission's Established "De Minimis" Interference Standard Applies to Other Broadcasters' Peripheral Interference, not to High Powered Transmissions within a Broadcast Station's Protected Service Area

QUALCOMM's Petition asks the Commission to declare that the *de minimis* standard for broadcast-station-to-broadcast station interference in the digital television context established by Section 73.623(c)(2) of the Commission's Rules is the appropriate standard for permissible interference in requests filed pursuant to Section 27.60 of the Commission's Rules.⁹ QUALCOMM claims that the *de minimis* standard that the Commission promulgated in the digital television context is somehow appropriate in dealing with new wireless communications services such as MediaFLO.¹⁰

⁹ Petition at p. 18.

¹⁰ *Id.*

However, the Commission adopted the *de minimis* standard in an entirely different and highly particular context inapplicable to QUALCOMM's MediaFLO service. The Commission developed the 2% *de minimis* standard in the specific, limited context of allowing a digital television station to suffer a limited degree of interference at the edge of its service area caused by a distant transmitter of a co-channel or adjacent-channel station.¹¹ The crux of the Commission's reasoning was that any loss of service caused by such interference was outweighed by the benefit of allowing digital stations' "...flexibility to construct DTV stations more quickly in order to start the DTV transition and, in most cases, the ability to provide new DTV service to a substantially larger number of viewers."¹²

Here, QUALCOMM is asking the Commission to use the 2% *de minimis* standard in a situation where multiple, high-powered transmitters would be operating inside a television station's predicted Grade B service area.¹³ The Commission never intended that the 2% standard be used as a benchmark for all types of interference under any circumstances. In fact, the

¹¹ See *Amendment of Part 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, 19 FCC Rcd. 19331, ¶ 103, (2004).

¹² *Id.*

¹³ See QUALCOMM press release "QUALCOMM Subsidiary to Support Nationwide Delivery of Mobile Multimedia in 700 MHz Spectrum" (Nov. 1, 2004) ("FLO technology in the 700 MHz spectrum (UHF channel 55)...deliver[s] content to a very large mobile subscriber base. Deploying high-power transmitters on tall towers provides superior coverage...").

Commission has stated that a standard of 0.1% interference to digital television (“DTV”) service populations shall be used in calculating when there is a conflict among DTV channel elections.¹⁴

QUALCOMM itself notes that the Commission has “...recognized the importance of adopting rules that ensure adequate protection of incumbent full-power analog and digital broadcasters during the transition period.”¹⁵ It is plainly inconsistent with the Commission’s above-cited case law and policies for QUALCOMM to expect analog TV stations to accept 2% interference when that standard was adopted in the limited and specific context of expediting the launch of digital television and was designed to affect only viewers at the periphery of a station’s service area, not throughout its core.

B. The 2% Interference Standard Would Disenfranchise a Significant Portion of the Viewers of Over-the-Air Broadcast Television, Contravening Commission Policy and Precedent

QUALCOMM cavalierly claims that “...the number of viewers whose television service will be adversely affected in these few markets will be very small because most of the viewers whose over-the-air service could be affected subscribe to cable or satellite service and will therefore, not suffer any interference whatsoever.”¹⁶ QUALCOMM takes this argument a step further, suggesting that the Commission should overlook affected viewers, since “...the vast majority of residents in the markets in question are among the 170 million Americans who own

¹⁴ See *In the Matter of Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd. 18279, n.97 (2004).

¹⁵ Petition at p. 7 (citation omitted).

¹⁶ Petition at p. 3; see also *id.* at p.19.

mobile phones...” and would be target customers for the “exciting” MediaFLO service.¹⁷ However, QUALCOMM’s 2% interference request is premised upon an incorrect and narrow-minded, indeed even elitist, approach. Many viewers in markets such as Los Angeles, with its sizable Spanish-speaking population (approximately 1.7 million Hispanic TV households)¹⁸ may not have the discretionary income to be able to purchase cable or satellite service (nor would they likely be able to afford the luxury of high-end mobile broadband gadgets associated with the “exciting” MediaFLO service), and hence depend upon ubiquitous free, over-the-air television broadcasting for their news and entertainment. In fact, of the approximately 1.7 million Hispanic TV households in the Los Angeles DMA, only approximately 773,880, or 45.5 percent, subscribe to cable television.¹⁹ Hence, the majority of the Spanish-speaking population in Los Angeles could suffer interference from MediaFLO – and they are the very audience to which KAZA-TV is broadcasting in their preferred language!

Just a month ago, the Commission’s Media Bureau denied Television Station KJLA(TV)’s request to discontinue its analog operations in the Los Angeles DMA.²⁰ KJLA cited undisputed facts that showed that only 0.25% of the station’s analog viewers receive the station via over-the-air viewing, and that vacating the spectrum would “...pave the way for new

¹⁷ *Id.* at p. 3.

¹⁸ *See* Nielsen Media Research at Exhibit B.

¹⁹ *Id.*

²⁰ *KJLA(TV), Ventura, CA, Request to Discontinue Analog Operations*, DA 05-343 (Letter from W. Kenneth Ferree, Chief, Media Bureau, to Barry A. Friedman, Esq., counsel for KJLA, LLC, dated Feb. 9, 2005, at 1) (“*KJLA Decision*”) (copy attached as Exhibit C).

and expanded wireless services.”²¹ The Commission’s Media Bureau flatly rejected KJLA’s request and its rationale, concluding instead that “...in a market the size of Los Angeles, the loss of analog over-the-air service *to even 0.25% of a station’s audience* could result in the disenfranchisement of a significant number of persons.”²² (Emphasis added).

In particular, the Media Bureau noted the significance of the fact that KJLA (like KAZA-TV) provides “...unique Spanish-language programming that will no longer be available to its analog over-the-air viewers should we permit the station to discontinue operation on channel 57.”²³ The Bureau noted that Los Angeles County contains a sizable (44.6%) Hispanic population, and that the “...loss of analog over-the-air Spanish-language programming could have a significant impact in these areas.”²⁴ Thus, irrespective of the encouragement by the Commission for new service offerings, the Media Bureau held firm to Commission policy and precedent that removing access to analog over-the-air television service for even 0.25% of a station’s potential audience could result in the unacceptable disenfranchisement of viewers, and cannot be permitted. QUALCOMM’s requested 2% interference proposal raises the exact same issue, but would multiply the disenfranchised population by a factor of eight; consistent with the *KJLA Decision*, the Commission should reject QUALCOMM’s request.

Finally, the cases cited by QUALCOMM in support of its 2% interference standard are inapposite, as they involved far fewer affected viewers. The cases actually serve to

²¹ *Id.*

²² *Id.* at 2.

²³ *Id.*

²⁴ *Id.*

demonstrate why the 2% standard is entirely inappropriate in this scenario. In *Access Spectrum*²⁵ and *Aloha Partners*,²⁶ the Wireless Telecommunications Bureau granted waivers of the interference protection criteria of Section 27.60 of the Commission's Rules in situations involving small numbers of potentially affected viewers – a high estimate of 2,143 households in *Aloha*²⁷ and almost non-existent impact in *Access Spectrum*, because the zone of interference was in a business district, was limited to a very small area within a radius of 170 meters, and did not even reach ground level.²⁸ In addition, the Wireless Telecommunications Bureau focused on the fact in *Access Spectrum* that there was "...nothing in the record to indicate that over-the-air TV receivers exist within the zone of interference."²⁹ The factual underpinnings of those decisions are entirely dissimilar from the scenario presented by the MediaFLO proposal, with its multiple, high-powered transmitters having an effective radiated power of 50,000 watts each, in a heavily populated area such as Los Angeles where a substantial portion of the population depends on analog over-the-air broadcast television.³⁰

²⁵ *In the matter of Access Spectrum, LLC Request for Waiver of Section 27.60*, 19 FCC Rcd. 15545 (2004) ("*Access Spectrum*").

²⁶ *In the matter of Aloha Partners, L.P.*, DA 05-460, FCC File No. 0001777981, 2005 FCC LEXIS 1156 (rel. Feb. 18, 2005) ("*Aloha Partners*").

²⁷ *Aloha Partners*, ¶ 10.

²⁸ *Access Spectrum*, ¶ 15.

²⁹ *Id.*

³⁰ Compare *Access Spectrum* and *Aloha Partners* with the potentially-affected population of KAZA-TV viewers, calculated by factoring 2% of the population within KAZA-TV's Grade B contour, which is 310,671 people, or 105,271 households. See *Khanna Statement* at 3 (noting that the 2% figure in the QUALCOMM proposal, as it pertains to KAZA-TV, is "several thousand times greater than the households affected by" *Aloha* and *Access*).

QUALCOMM's petition does not present any factually similar precedent because, quite simply, there is none. The Commission has never permitted over 300,000 potentially affected viewers to receive interference. Rather, as the Wireless Telecommunications Bureau stated in the *Access Spectrum* decision, "Commission precedent demonstrates a measured concern over the likelihood of interference to residential areas."³¹ Moreover, Commission precedent establishes that "...when 100 or more residences exist within a Grade B contour and predicted interference contour, authorization must be solely under exceptional circumstances, and the "stringency of the plan to control interference...[must] be commensurate with the number of potentially affected residences."³² QUALCOMM's Petition completely ignores established precedent and asks the Wireless Telecommunications Bureau to depart from the Commission's longstanding protection of television viewers. Irrespective of whatever unique service QUALCOMM may seek to offer, it cannot do so at the expense of more than 300,000 potential viewers.

³¹ *Access Spectrum*, at n. 51. See also 47 C.F.R. § 73.525 (effectively prohibiting interference to the population predicted to receive service from television stations operating on Channel 6 by non-commercial educational FM stations exceeding 3,000 people); see also Khanna Statement at 6.

³² *Access Spectrum* at n. 51(citing *Application of Fred Daniel d/b/a Orion Telecom*, 14 FCC Rcd. 3909, 3911-12, ¶ 7 (1999) (additional citations omitted).

III. OET-69 IS NOT AN ACCEPTABLE ENGINEERING METHODOLOGY TO ESTABLISH COMPLIANCE WITH SECTION 27.60 OF THE COMMISSION'S RULES

A. *The Proposed Standard Would Not Measure the Extent of Interference to Cable Headends*

QUALCOMM'S Petition requests that the Commission declare that the technology that forms the basis for OET-69 is an acceptable engineering methodology to demonstrate compliance with Section 27.60. In so doing, QUALCOMM conveniently and cavalierly seizes upon a unique set of engineering principles and attempts to apply them wholesale to a totally different and inapposite set of circumstances. OET-69 is entirely inappropriate in the context of analyzing the interference to analog TV stations from MediaFLO for a number of reasons. For one thing, OET-69 does not predict the extent of the impact on KAZA-TV (or other television stations, for that matter), because OET-69 does not permit consideration of the potential of interference to cable television subscribers.

QUALCOMM claims that MediaFLO's interference will be minimal, since most viewers receive their broadcast signals via cable television or satellite providers, and "...will therefore, not suffer any interference whatsoever."³³ However, QUALCOMM provides no support for this presumption. For those KAZA-TV viewers who are cable subscribers, the MediaFLO service can interfere with the quality of their reception of KAZA-TV's signal, and the OET-69 techniques provide no assistance in determining the extent of that degradation. That is because OET-69 studies the effects of signal propagation over terrain and through free space.

³³ Petition at p. 3.

However, if a MediaFLO 50,000-watt transmitter were to be located in the near vicinity of a cable television system's headend, its high signal strengths on Channel 55 could degrade the headend's ability to receive and discriminate in favor of KAZA-TV's adjacent-channel signal on Channel 54, with the result that the KAZA-TV signal retransmitted to the cable subscribers could be degraded. And this could affect hundreds or thousands of cable subscribers, indeed those residing many, many miles away from the MediaFLO transmitter and beyond any interference zone that OET-69 would predict. QUALCOMM's proposed importation of the OET-69 methodology into Section 27.60 compliance analysis "...has no provision for predicting interference caused to cable headends."³⁴ In fact, OET-69 "...is incapable of predicting the full extent of the interference and cannot be relied upon to determine the percentage of interference caused to the TV stations by the Qualcomm base stations."³⁵ The Khanna Statement explains that OET-69 would give an incorrect assessment of the impact of MediaFLO interference on KAZA-TV, because OET-69 would not consider the impact on KAZA-TV's signal at cable headends. Specifically, "[t]he D/U ratio for adjacent channel protection is 0 dB which means if Qualcomm's signal would be equal or greater than the KAZA-TV signal at the cable headend, it would result in destructive interference...."³⁶

The fact that the Commission requires a strict level of protection for incumbent television stations operating in the lower 700 MHz band should come as no surprise to

³⁴ Khanna Statement at 5.

³⁵ *Id.*

³⁶ *Id.* at 6.

QUALCOMM. The Commission specifically stated to all of the bidders in Auction No. 44 that entities bidding on the licenses in the 700 MHz band "...should recognize that the interference protection requirements for the Lower 700 MHz band are more stringent in certain respects relative to the interference standards that apply to the Upper 700 MHz band."³⁷ Moreover, the Commission cautioned bidders that "[n]ew Lower 700 MHz licensees also will have to comply with any additional technical requirements or interference protection requirements that may be adopted in the future..."³⁸ Thus, QUALCOMM was adequately forewarned that any service it sought to provide with the licenses it was bidding for could be subject to enhanced interference standards.³⁹

IV. THE STREAMLINED PROCESSING PROPOSED BY QUALCOMM WOULD CREATE AN UNPRECEDENTED PRESUMPTION IN FAVOR OF QUALCOMM AT THE EXPENSE OF INCUMBENT TELEVISION VIEWERS

QUALCOMM claims that the urgency of launching MediaFLO necessitates that the Commission adopt a streamlined processing of OET-69 showings that would establish an unprecedented presumption in favor of QUALCOMM at the expense of incumbent television stations and their viewers. Although QUALCOMM has not pinned down a launch date, it somehow sees itself as entitled to a truncated interference examination procedure whereby it

³⁷ Public Notice, "Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002 (DA 02-563, Mar. 20, 2002), at 9.

³⁸ *Id.*

³⁹ *See also* Khanna Statement at 8-9 (noting Commission precedent that in adopting service rules for the Lower 700 MHz band, the Commission adopted regulations designed for the full protection of incumbent TV licensees in the band).

could, simply by submitting a “showing of OET-69 compliance,” shift the burden to an incumbent broadcast station, which would then have to prove that QUALCOMM would not interfere with existing services. Absent any objection received during a shortened public notice period, QUALCOMM’s proposal would be granted.⁴⁰

The Commission should reject QUALCOMM’S request for a streamlined process. The law of this Circuit requires that the impact of changes in the service provided by existing broadcast stations must be carefully analyzed and that preservation of existing services takes precedence.⁴¹ That is why the Commission specifically required that waiver petitions be filed and reviewed in the *Aloha Partners* and *Access Spectrum* cases. The need for a careful, case-by-case review is particularly necessary where, as was the case in *Aloha Partners and Access Spectrum*, and as is the situation with QUALCOMM’s MediaFLO service, the proposed facilities would be installed within an incumbent station’s Grade B contour.

Moreover, the case QUALCOMM has cited to support its proposed streamlined approach is – once again – totally inapposite⁴² The streamlined approach in the *Forbearance Decision* applies to *pro forma* assignments of licenses and transfers of control of licensees.

⁴⁰ Petition at pp. 22-25.

⁴¹ *Triangle Publications, Inc.*, 3 Rad. Reg. 2d (P & F) 37, ¶ 14 (“Once in operation, a station assumes an obligation to maintain service to its viewing audience and the withdrawal or downgrading of existing service is justifiable only if offsetting factors are shown which establish that the public generally will be benefited.” (citing *Hall v. FCC*, 237 F.2d 567 (D.C. Cir. 1954)).

⁴² See *Federal Communications Bar Association’s Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Licenses and Transfers of Control Involving Telecommunications Carriers Licensed by the Wireless Telecommunications Bureau*, 13 FCC Rcd. 6293 (1998) (“*Forbearance Decision*”).

There is absolutely no correlation between reviewing complex engineering submissions pertaining to a new service's interference potential to a broadcast station and the review of *pro forma* ownership changes, which will have no impact upon the quality of service provided by the station whose ownership is being changed. QUALCOMM's suggestion of a streamlined procedure, based upon the *Forbearance Decision* precedent, would make a mockery out of the stringent interference protections accorded to KAZA-TV and other broadcast stations, and is entirely without logic or authority.⁴³

Pappas proposes, instead, a procedure whereby QUALCOMM would be required to notify any potentially-affected broadcast station of the planned launch of its MediaFLO service in that station's market at least 60 days before submitting its application to the Commission. The broadcast station would have an opportunity to analyze the impact of QUALCOMM's service upon its signal. The parties could then attempt to resolve potential interference concerns through good-faith negotiations. If such negotiations were to reach an impasse after some defined period, such as 30 days, then QUALCOMM could proceed to submit its application and waiver request, and the affected broadcast station could submit its objection to

⁴³ In addition, the Commission should not place great weight in the three test markets in which QUALCOMM alleges that interference to incumbent television broadcasters were studied and were found to be negligible. As an initial proposition, the Commission cannot know whether multiple market studies were conducted with differing results, some of which were less favorable to QUALCOMM's advocacy, and whether the three markets were selected for presentation to the Commission based upon their outcomes, rather than the differentiation of their results from the results reached in other market studies less favorable to QUALCOMM's position. Secondly, at least two of the studied markets (New Orleans, Louisiana and Oklahoma City, Oklahoma) bear little resemblance in topography or population density to KAZA-TV's Los Angeles market.

the Commission. This procedure would protect incumbent broadcast stations, and their viewers, without significantly delaying new services. In the context of lower 700 MHz band licenses and secondary services, the Commission adopted a modified version of this notification and negotiation process.⁴⁴

Commission decisions require that interference analyses of proposed new services, like MediaFLO, be conducted on a case-by-case basis, as in the examples of *Access Spectrum* and *Aloha Partners*. Streamlined processing is not appropriate in reviewing complex engineering proposals involving multiple high-powered transmitters placed in the very heart of an adjacent-channel television station's protected service area. Moreover, shifting the burden to broadcast stations would be inappropriate and unprecedented, since MediaFLO is a new service and only QUALCOMM possesses full knowledge of the details of the proposed service, such as transmitter location, proximity to cable headends, power levels, antenna heights, possible directionalization of radiation, etc.; the affected broadcast station would need time to study all of those factors and their impact upon its service, which cannot fairly be accomplished in an expedited application processing procedure. Pappas respectfully urges the Commission to reject QUALCOMM's attempt to create a cursory review process that would undermine longstanding Commission policy to "...maintain the viability of free over-the-air television, and protect this

⁴⁴ See *Amendment of Part 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, 19 FCC Rcd. 19331, ¶¶ 71-74 (2004).


service for the millions of Americans who receive their news, entertainment, and so many other services solely from over-the-air broadcasting.”⁴⁵

V. CONCLUSION

WHEREFORE, the foregoing having been duly considered, Pappas respectfully urges the Commission to deny QUALCOMM’s request for relief in the Petition.

Respectfully submitted,

PAPPAS SOUTHERN CALIFORNIA LICENSE, LLC

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March 10, 2005

⁴⁵ *In the Matter of Reallocation and Service Rules for the 698-746 MHz Spectrum Band*, 17 FCC Rcd. 1022 (2001) (Separate Statement of Commissioner Michael J. Copps).

CERTIFICATE OF SERVICE

I, Nancy St. Hilaire, do hereby certify that I have on this 10th day of March, 2005, caused a copy of the foregoing **Comments** to be sent by first-class United States mail, postage prepaid, to the following:

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ENGINEERING STATEMENT
ON BEHALF OF
PAPPAS SOUTHERN CALIFORNIA LICENSE, LLC
IN SUPPORT OF OPPOSITION TO
PETITION FOR DECLARATORY RULING FILED BY
QUALCOMM INCORPORATED
MARCH 2005

This engineering statement has been prepared on behalf of Pappas Southern California License, LLC (“Pappas”), licensee of analog TV station KAZA-TV, Avalon, California, in support of its opposition to Petition for Declaratory Ruling (“Petition”) filed by Qualcomm Incorporated (“Qualcomm”). Qualcomm has filed this Petition requesting the Commission to rule that the OET Bulletin 69 methodology (Longley-Rice Methodology for Evaluating Coverage and Interference) be accepted to demonstrate compliance with Section 27.60 of its rules. Qualcomm has also proposed that 2% interference caused by the Lower 700 MHz Band users to the analog TV stations be considered acceptable.

KAZA-TV currently operates on analog TV Channel 54 (710-716 MHz) with 2290 kilowatts effective radiated power (ERP) and 997 meters (3270 feet) antenna height above average terrain (HAAT) using a directional TV antenna. The station’s antenna site is located on Mount Wilson, northeast of Los Angeles, California.

Qualcomm plans to operate fixed stations in the Lower 700 MHz Band. Such transmitters can operate with maximum ERP of 50 kW. Since Qualcomm’s fixed stations would be operating on frequencies adjacent to TV Channel 54 (710-716 MHz), KAZA-TV’s operating frequency, there is a potential of harmful interference to the reception of the KAZA-TV signal.

Pappas is opposed to the Qualcomm Petition for the following reasons.

Potential of Harmful Interference

1. Substantial Interference to KAZA-TV Over-the-Air Reception

Pappas believes that grant of the proposed Qualcomm Petition could result in substantial harmful interference to the reception of analog TV Channel 54 signals within

the KAZA-TV Grade B contour. The attached map (Figure 1) shows the predicted Grade B contour of KAZA-TV which has been computed according to section 73.683 of the Commission's rules. Figure 1 also shows the hypothetical Grade B contour (88.5 km circle) of KAZA-TV, protected area prescribed under section 27.60 of the Commission's rules. The estimated population within the predicted KAZA-TV Grade B contour is 15,533,550 people (2000 census) or 5,263,550 household (2000 census). Qualcomm's proposal to allow up to 2% interference to KAZA-TV could affect 310,671 people or 105,271 households¹. The impacted population may appear rather small from a percentage point of view; however, it represents a very large number of people who can be affected in the Los Angeles market. In order to provide some perspective on the extent of 2% population within the predicted Grade B contour of KAZA-TV, attached Table I has been prepared which lists total population of some of the communities, based on the 2000 census of the United States. Table I indicates the combined total population of 21 communities would be less than the 2% population (310,671 people) that can be affected by the Qualcomm proposal.

In addition, the 2% figure is several thousand times greater than the households affected by the Aloha Partners, L.P. ("Aloha") and Access Spectrum, LLC ("Access") requests for waivers of the Commission's rules. In granting the Aloha and Access waiver requests, the Wireless Bureau determined that a very small number of households were likely to be impacted by the proposed Access and Aloha operations. Even a very small amount of interference was considered significant by the Wireless Bureau in ruling that such proposals required a waiver of the Commission's rules.

¹ The estimated population (2000 census) within the hypothetical Grade B contour (88.5 km circle) is 14,850,388 people (5,044,375 households). Two percent of these population figures would be 297,008 people (100,888 households).

It should be noted that the Access proposal involved a ten channel trunked land mobile base station, at 50 watts effective radiated power (ERP) per channel, within the TV station's service. Qualcomm's proposed several transmitters would be operating with 50,000 watts ERP each within the TV station's service area, which have significantly higher potential than the Access operation for causing interference.

Aloha estimated impact on only 22 households within the Grade B contour of adjacent channel analog TV station (KWBA). Aloha claimed it had attempted to locate all of its transmitters away from the residential neighborhoods. There is no such provision in the Qualcomm proposal for locating transmitter sites in non-residential areas. In Aloha's case, the Wireless Bureau concluded that Aloha's proposed operation, including the commitment to cure any interference that might occur, would not reduce the service to television viewers from KWBA. In the Access case, the Wireless Bureau determined the interference caused to the analog TV station (KZJL) would be limited to an area within 169.3 meters from the proposed Access transmitters, and there was no indication of over-the-air receivers (households) within the predicted interference area. In the Aloha case, the Wireless Bureau determined the area of interference caused to the TV stations would range between 246 meters to 313 meters by using a different computer program.

In many situations the proposed Qualcomm methodology (OET Bulletin 69) cannot predict the full extent of interference, since it does not take into account man-made obstructions. The OET Bulletin 69 methodology computes loss in the signals due to distance and natural terrain only. There is no provision for losses caused by man-made structures. There could be locations within the Grade B contours of TV stations where

the TV station's signal is blocked due to man-made structures; however, those locations may have direct line of sight from the Qualcomm transmitters. The OET Bulletin 69 methodology cannot predict the full extent of interference in such situations since man-made obstruction data is not used in the computation of TV signals and interference.

The Wireless Bureau used "The ILLR Computer Program" (FCC Office of Engineering and Technology Report, OET Bulletin 72) for conducting its own independent engineering analysis to determine the impact on KWBA from the proposed Aloha operation. The ILLR methodology was slightly modified by using 1) F(90,90) probability; 2) an indoor TV receive antenna height of 6 feet above ground; 3) a 10 dB loss for building penetration. The ILLR procedure requires determination of the pertinent TV signal at each household. The ILLR methodology is significantly different than the methodology proposed by Qualcomm to evaluate interference.

2. Interference to KAZA-TV Cable Headends

In addition, the Qualcomm proposed OET Bulletin 69 procedure does not predict the full extent of impact on the TV station, since it does not take into account the potential of interference to cable headends which carry KAZA-TV signals. Qualcomm's suggested OET Bulletin 69 methodology has no provision for predicting interference caused to cable headends. Therefore, this procedure is incapable of predicting the full extent of the interference and cannot be relied upon to determine the percentage of interference caused to the TV stations by the Qualcomm base stations.

The attached map (Figure 2) shows some of the cable headends in the Los Angeles area which carry KAZA-TV signals. This information has been obtained from the cable systems' files at the Commission. Qualcomm has indicated more than one

transmitting station would be deployed in “congested markets,” presumably markets such as Los Angeles, California. Qualcomm’s transmitters individually or in combination with other transmitters can result in stronger TV signals than the KAZA-TV signals at the cable headends. The D/U ratio for adjacent channel protection is 0 dB, which means if Qualcomm’s signal would be equal or greater than the KAZA-TV signal at the cable headend, it would result in destructive interference to the over-the-air reception of the TV signal. As such, the adverse impact on KAZA-TV would be significantly greater than predicted by OET Bulletin 69.

Commission’s Current Rules & Methodologies for Protecting Analog TV

1. Minimal Interference Permitted for Channel 6 TV Stations

Section 73.525 of the Commission’s rules does not permit interference to Channel 6 TV stations by non-commercial educational FM stations exceeding 3000 people. Qualcomm’s proposal could result in interference to over three hundred thousand people, which is clearly contrary to the Commission’s rules for permitting minimal interference to TV stations. The Commission’s rules do not permit the use of OET Bulletin 69 (Longley-Rice) for determining interference to Channel 6 TV stations from the non-commercial educational FM stations. The standard prediction method as prescribed in sections 73.684 and 73.313 of the Commission’s rules are used for the computation of desired and undesired signal ratios.

2. No Interference Permitted by TV Translator and LPTV Stations

In order to protect TV stations, sections 73.6011 and 74.705 of the Commission’s rules does not permit Class A TV, TV Translator or LPTV stations’ antenna sites within the protected Grade B contour of analog TV stations. Qualcomm’s transmitters would be

located within the protected Grade B contours of the analog TV stations. Alternatively it is required that applicants for Class A TV, TV Translator and LPTV stations demonstrate no interference to the analog TV stations based on Longley-Rice terrain dependent propagation method. However, the Class A TV, TV Translator and LPTV stations are not permitted to cause 2% interference to analog TV stations on the basis of predictions made using Longley-Rice or any other methodology.

3. DTV Protection Methodology & Current Analog TV protection

TV stations that operate on the same channel or adjacent channels are located many miles apart from each other. Since interfering signals are significantly attenuated due to distance under real world propagation conditions, any adverse impact caused by one TV station on another TV station is considerably reduced or minimal in most cases. Qualcomm's plan would locate its sites within the TV station's protected service areas, which could result in substantial interference to co-channel and adjacent channel TV stations.

The Commission has allotted DTV channels at the same site as an adjacent channel analog TV station to minimize the potential of interference between the two stations. Similarly, non-commercial educational FM stations which operate on adjacent frequencies to analog TV Channel 6 are collocated in many cases, in order to reduce the potential of interference. There is no assurance that Qualcomm's sites would be located inside the protected TV station's contour at the TV station's site.

The 2% interference criteria was adopted by the Commission to afford applicants additional flexibility to design their DTV systems to improve coverage within their

communities and increase their service areas and to facilitate quicker implementation of digital TV service. The Commission has stated in MB Docket 03-185, paragraph 103, “In the full-service context, the benefit offsetting the loss of service to interference was the flexibility to construct DTV stations more quickly to a substantially larger number of viewers.”

The Commission may not continue using OET Bulletin 69 procedure and 2% additional interference criteria, once the transition to digital operation is completed. This is evident by Section 73.623(d) of the Commission rules which requires the use of minimum distances for making new DTV channel allotments. Therefore, it is clear that the Commission intends to protect TV stations from interference based upon the minimum separations between TV stations and sources of interference. In the Sixth Report & Order the Commission said “We therefore propose to make short-spaced or non-conforming allotments only during the initial assignment phase for existing stations, so that subsequent additions to the DTV Table for stations to be operated by new applicants would be required to comply with the minimum spacing or engineering requirements.” Analog TV as well as AM and FM stations have been historically protected from interference based upon the minimum separation requirements or up to the outer limits of their service contours from the interfering signals.

The Commission is using 0.1 % additional interference criteria in the procedure adopted in Second Periodic review of DTV stations for making final election of DTV channels.

4. Media Bureau Ruling

The Commission's Media Bureau recently denied KJLA(TV)'s request to terminate its analog Channel 57 operation on the basis that 0.25% of the station's viewers will lose Channel 57 analog TV service, which was a significant number of people to be subjected to disenfranchisement. The loss of analog TV service to even 0.25% of station's viewers was considered unacceptable.

5. GN Docket 01-74

In the Report and Order adopting service rules for the Lower 700 MHz band, the Commission said "We emphasize that we have an obligation to fully protect incumbent full power analog and digital broadcasters during the transition period, and adopt rules that support this core value."²

In the discussion of adopting interference protection rules, the Commission said "These limits are based on the limits of a through experimental study of land mobile interference to analog television conducted many years before the advent of digital television, and they properly apply to only analog television. We are adopting these same protection criteria for analog TV stations in the Lower 700 MHz."³

The above discussion clearly indicates that the rules adopted by the Commission in GN Docket 01-74 are based on experimental study of many years; therefore, these rules should not be relaxed or modified. Any changes to these rules will result in adverse impact on the analog TV operation.

It should be also noted that no party filed comments opposing the full protection of incumbent TV stations in GN Docket 01-74. The Commission stated that "None of the

² GN Docket 01-74, III. DISCUSSION, A (2)(a)(2)-Incumbent Broadcasters

³ GN Docket 01-74, III. DISCUSSION A(2)(b)(5)

comments opposed the provision of full protection to incumbent TV licensees in the Lower 700 MHz Band. In fact, several comments proposed additional measures to protect incumbents.”⁴

6. Commissioner Copps Statement

Commissioner Copps said as follows in a statement adopting the Report and Order in GN Docket 01-74:

“Continued access to free over-the-air television is also a central concern of this Commission. Broadcasters serve a special and critical role in our communities and in the nation’s marketplace of ideas. We must always work to maintain the viability of free over-the-air television, and protect this service for the millions of Americans who receive their news, entertainment, and so many other services solely from over-the-air broadcasting. Free over-the-air television will be just as critical in the digital era as it is right now in these early days.

By refraining from adopting the band-clearing incentives for channels 52-59 that the previous Commission adopted for channels 60-69, we guarantee that, as has always been the case in other bands, we will review band-clearing proposals with the understanding that “once in operation, a station assumes an obligation to maintain service to its viewing audience, and the withdrawal or downgrading of existing service is justifiable only if offsetting factors are shown which establish that the public generally will be benefited.”⁵ Therefore, we come down squarely on the side of a public interest review of each case rather than letting purely commercial transactions determine the future of this critical public spectrum.”

⁴ GN Docket 01-74, III DISCUSSION (A)(2)(b)(3)

⁵ *Triangle Publications, Inc.*, 37 FCC 307, 313 (1964), citing *Hall v. FCC*, 237 F.2d 567 (D.C. Cir. 1954).

The Commission's current rules, Media and Wireless Bureaus' recent rulings and Commissioner Copps' statement reinforce the fact that over-the-air analog TV service is vital in providing public service and is currently protected from interference by other co-channel and adjacent channel transmitters. Under special circumstances, a very minimal amount of interference is permitted on a case by case basis.

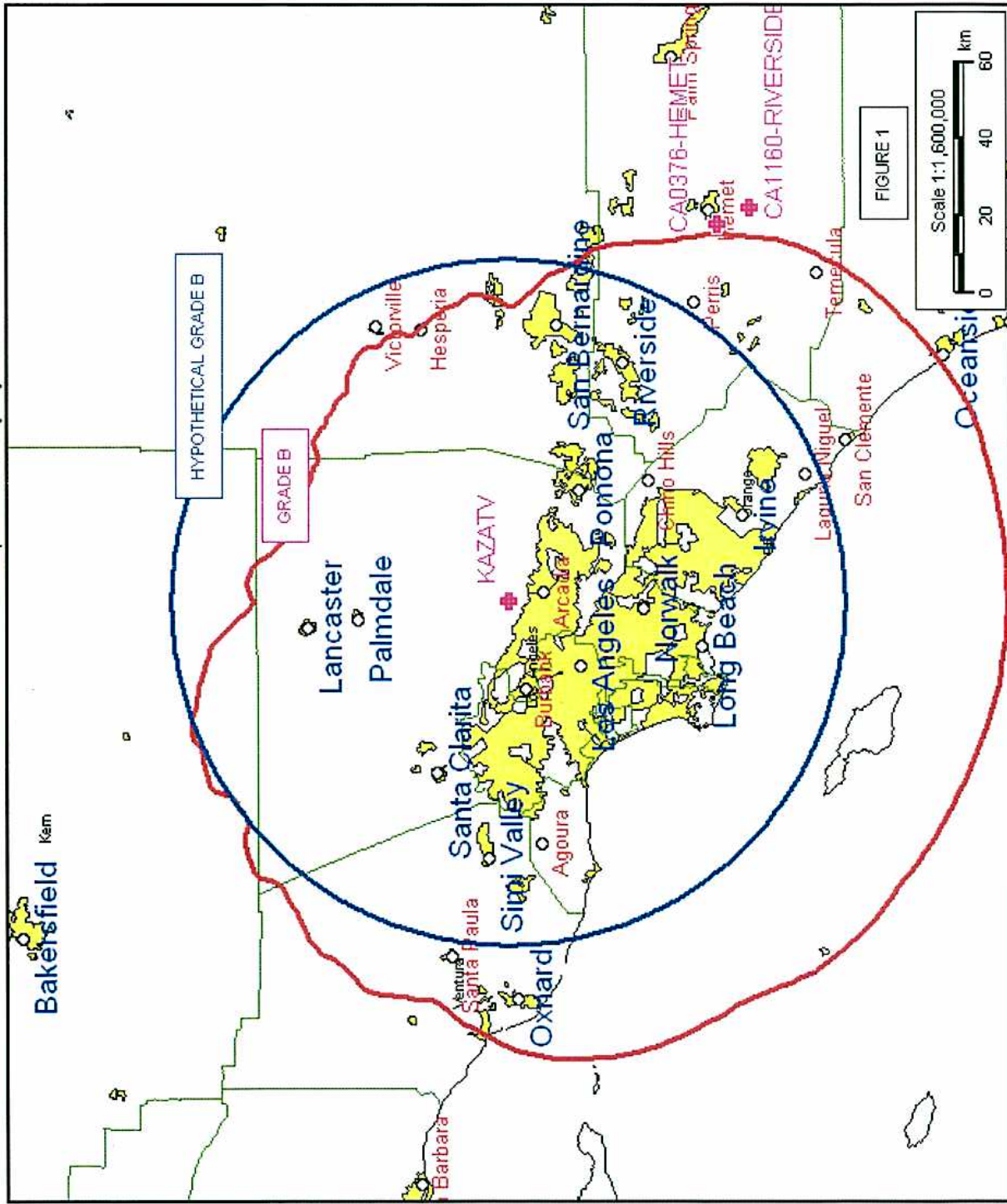
Under penalty of perjury the undersigned states that the foregoing statement has been prepared by him and that the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts, he believes them to be true.

9 March 2005

S. K. Khanna
Professional Engineer
District of Columbia, PE License No.8057

TABLE I
POPULATION OF COMMUNITIES
LOCATED WITHIN THE PREDICTED GRADE B CONTOUR OF
KAZA-TV, AVALON, CALIFORNIA
MARCH 2005

<u>COMMUNITY</u>	<u>2000 CENSUS POPULATION</u>
1. West Hollywood	35,716
2 Beverly Hills	33,784
3. Laguna Beach	23,727
4. Hermosa Beach	18,566
5. Santa Fe Springs	17,438
6. Artesia	16,380
7. Walnut Park	16,180
8. El Segundo	16,033
9. La Palma	15,408
10. Palos Verdes Estates	13,340
11. San Marino	12,945
12. Los Alamitos	11,536
13. View Park-Windsor Hills	10,958
14. Sierra Madre	10,578
15. Rossmoor	10,298
16. Signal Hill	9,333
17. Charter Oak	9,027
18. Rolling Hills Estates	7,676
19. Ladera Hts	6,568
20. East Pasadena	6,045
21. Villa Park	5,999
 TOTAL POPULATION	 <u>307,535</u>



KAZATV

BLCT20010712AGN

Latitude: 34-13-35 N

Longitude: 118-03-58 W

ERP: 2290.00 kW

Channel: 54+

Frequency: 713.5 MHz

AMSL Height: 1853.0 m

Elevation: 1672.18 m

Horiz. Pattern: Directional

Vert. Pattern: Yes

Elec Tilt: 2.0

Prop Model: None

FIGURE 1

Scale 1:1,600,000

MARCH 2005

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 BLCT20010712AGN
 Latitude: 34-13-35 N
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 Prop Model: None

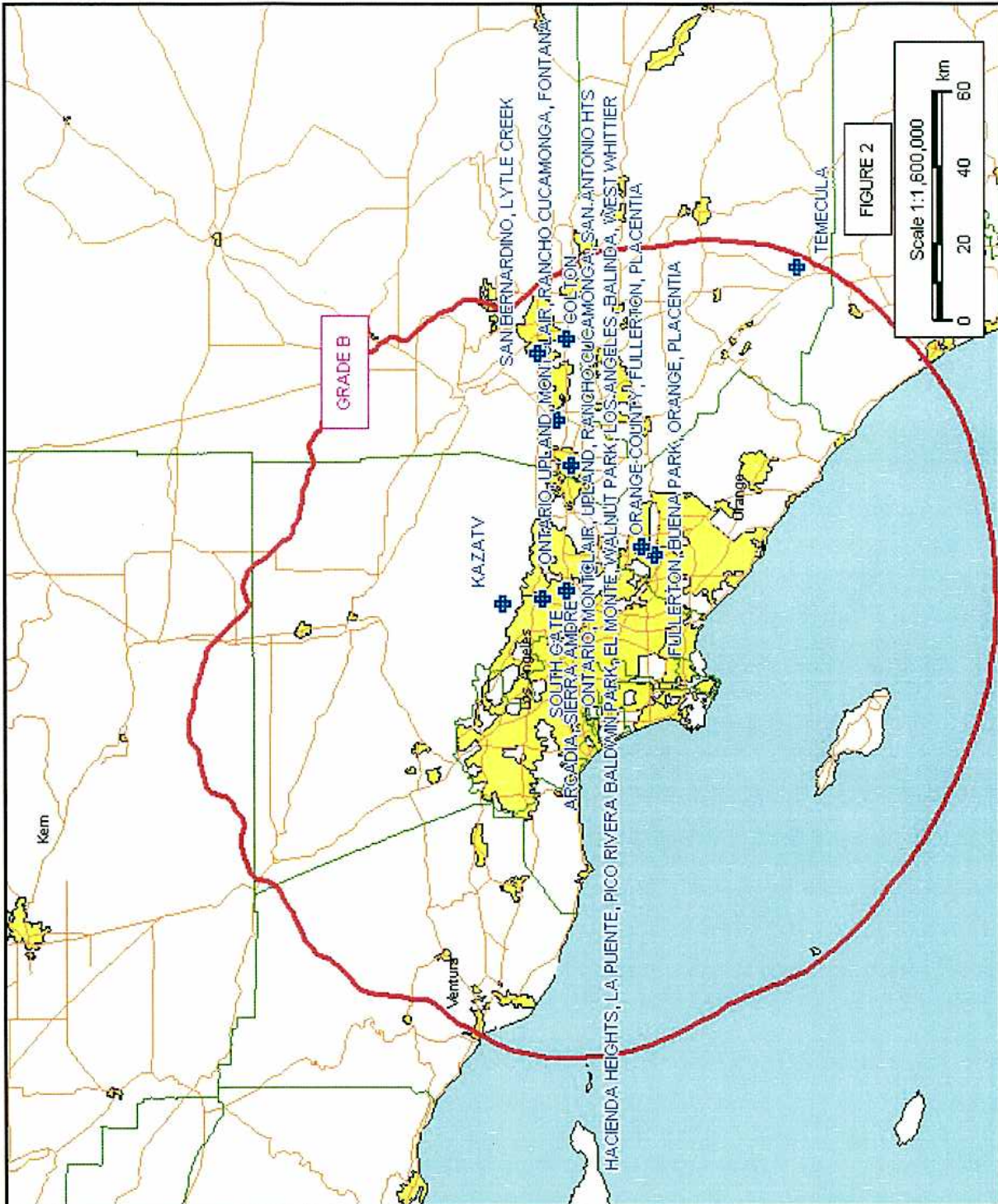


FIGURE 2

MARCH 2005



Nielsen
Media Research

Nielsen Media Research
Top 40 DMA's Ranked by Hispanic TV Households
Cable TV Household Estimates as of November 2004 and TV Household Estimates as of January 2005

Rank by Hispanic TV/HH	DMA	DMA Name	All TV Households		Cable TV Households		Of		Of		% Cable Among HSP HHS
			Total	Hispanic	Total	Hispanic	TV/HHS % HSP	Cable HHS % HSP			
1	803	LOS ANGELES	5,431,140	1,718,730	3,106,550	773,880	31.6	24.9	57.2	45.0	
2	501	NEW YORK	7,355,710	1,203,930	5,940,490	957,600	16.4	16.1	80.8	79.5	
3	528	MIAMI-FT. LAUDERDALE	1,496,810	603,180	1,073,240	433,000	40.3	40.3	71.7	71.8	
4	618	HOUSTON	1,902,810	454,560	1,037,350	198,990	23.9	19.2	54.5	43.8	
5	602	CHICAGO	3,417,330	432,920	2,371,120	234,040	12.7	9.9	69.4	54.1	
6	623	DALLAS-FT. WORTH	2,292,760	388,860	1,064,430	155,450	17.0	14.6	46.4	40.0	
7	641	SAN ANTONIO	748,950	348,250	485,330	241,610	46.5	49.8	64.8	69.4	
8	807	SAN FRANCISCO-OAK-SAN JOSE	2,359,870	332,500	1,800,030	232,280	14.1	12.9	76.3	69.9	
9	753	PHOENIX	1,596,950	294,560	965,900	120,050	18.4	12.4	60.5	40.8	
10	636	HARLINGEN-WSLCO-BRNSVL-MCA	312,300	256,840	147,420	116,620	82.2	79.1	47.2	45.4	
11	790	ALBUQUERQUE-SANTA FE	649,680	222,670	328,300	107,880	34.3	32.9	50.5	48.4	
12	862	SACRAMENTO-ST/KN-MODESTO	1,315,030	220,690	738,960	112,530	16.8	15.2	56.2	51.0	
13	825	SAN DIEGO	1,025,730	215,980	855,250	145,030	21.1	17.0	83.4	67.1	
14	765	EL PASO	288,440	207,260	165,890	103,570	71.9	62.4	57.5	50.0	
15	866	FRESNO-VISALIA	527,770	203,640	252,580	85,480	38.6	33.8	47.9	42.0	
16	751	DENVER	1,401,760	194,300	797,910	101,230	13.9	12.7	56.9	52.1	
17	511	WASHINGTON, DC(HAGRSTWN)	2,241,610	148,390	1,605,060	84,972	6.6	5.3	71.6	57.3	
18	504	PHILADELPHIA	2,919,410	147,740	2,388,700	108,485	5.1	4.5	81.8	73.4	
19	534	ORLANDO-DAYTONA BCH-MELBRN	1,303,150	142,830	955,760	83,396	11.0	8.7	73.3	58.4	
20	539	TAMPA-ST. PETE (SARASOTA)	1,671,040	137,750	1,274,720	67,459	8.2	5.3	76.3	49.0	
21	635	AUSTIN	567,870	120,330	377,430	80,090	21.2	21.2	66.5	66.6	
22	506	BOSTON (MANCHESTER)	2,391,840	115,250	2,037,350	83,350	4.8	4.1	85.2	72.3	
23	524	ATLANTA	2,059,450	111,950	1,418,290	52,000	5.4	3.7	68.9	46.4	
24	789	TUCSON	417,070	109,360	245,750	57,330	26.2	23.3	58.9	52.4	
25	839	LAS VEGAS	614,150	107,330	451,910	53,756	17.5	11.9	73.6	50.1	
26	600	CORPUS CHRISTI	193,290	100,960	146,030	76,540	52.2	52.4	75.5	75.8	
27	819	SEATTLE-TACOMA	1,690,640	75,440	1,222,630	37,610	4.5	3.1	72.3	49.9	
28	533	HARTFORD & NEW HAVEN	1,017,530	72,580	892,620	52,625	7.1	5.9	87.7	72.5	
29	548	WEST PALM BEACH-FT. PIERCE	729,010	71,570	578,260	35,676	9.8	6.2	79.3	49.8	
30	800	BAKERSFIELD	194,180	67,210	129,110	32,275	34.6	25.0	66.5	48.0	
31	820	PORTLAND, OR	1,086,900	66,620	633,370	26,826	6.1	4.2	58.3	40.3	
32	828	MONTEREY-SALINAS	218,450	62,020	142,390	24,007	28.4	16.9	65.2	38.7	
33	770	SALT LAKE CITY	800,000	61,590	345,790	20,208	7.7	5.8	43.2	32.8	
34	749	LAREDO	62,720	58,130	43,230	39,511	92.7	91.4	68.9	68.0	
35	771	YUMA-EL CENTRO	99,490	52,680	53,270	22,738	53.0	42.7	53.5	43.2	
36	752	COLORADO SPRINGS-PUEBLO	313,170	47,640	180,440	24,793	15.2	13.7	57.6	52.0	
37	633	ODESSA-MIDLAND	135,450	47,550	100,960	29,319	35.1	29.0	74.5	61.7	
38	505	DETROIT	1,943,930	45,430	1,382,620	25,362	2.3	1.8	71.1	55.8	
39	571	FT. MYERS-NAPLES	444,130	44,590	324,140	16,224	10.0	5.0	73.0	36.4	
40	625	WACO-TEMPLE-BRYAN	308,970	44,270	208,440	27,759	14.3	13.3	67.5	62.7	
US TOTAL (NSI)			109,590,170	10,904,640	73,575,460	6,018,597	10.0	8.2	67.1	55.2	



Federal Communications Commission
Washington, D.C. 20554

February 9, 2005

DA 05-343

Barry A. Friedman, Esq.
Thompson Hine, LLP
1920 N Street, NW
Washington, D.C. 20036-1600

Re: KJLA(TV), Ventura, CA
Request to Discontinue Analog Operations
Facility ID No. 14000

Dear Counsel:

This letter is in response to your request, filed on behalf of KJLA, LLC (KJLA), licensee of analog television station KJLA(TV), Channel 57, Ventura, California, and permittee of digital television (DTV) station KJLA-DT, Channel 49, Ventura, California, to discontinue operation of the KJLA(TV)'s analog operation on Channel 57. For the reasons set forth below, we deny your request to terminate analog operations for KJLA(TV).

In *Reallocation and Service Rules for the 698-746 MHz Spectrum (Television Channels 52-59)*,¹ the Commission stated that it would consider requests by incumbent television stations on channels 52-59 to voluntarily vacate their analog channels prior to the end of the DTV transition on a case-by-case basis. The Commission stated that it would examine three factors in considering such requests: (1) whether grant of the request would make new or expanded wireless services available to consumers; (2) whether grant would result in the loss of any of the four stations in the DMA with the largest audience share, the loss of sole service licensed to the local community, or the loss of the community's sole noncommercial educational television service; and (3) whether grant would have a negative effect on the pace of the DTV transition in that market.²

In your request, you argue that vacating channel 57 will free up analog spectrum and "pave the way for new and expanded wireless services." The spectrum comprising television channel 57, however, has yet to be auctioned for use by new wireless services. You have not shown, therefore, that vacating channel 57 at this time will serve the public interest by expediting new or expanded use of this spectrum.

Although KJLA(TV) is Ventura's sole broadcast television station, you maintain that there would be no actual loss of analog over-the-air service if KJLA(TV) were to

¹ 17 FCC Rcd 1022, 1096 (2002).

² *Id.* at n. 549.

terminate operation. You submit documentation from Nielsen research that purports to show that 0.25% of the station's analog viewers receive the station via over-the-air viewing. While you did not supply the exact number of station viewers, we find that in a market the size of Los Angeles, the loss of analog over-the-air service to even 0.25% of a station's audience could result in the disenfranchisement of a significant number of persons. In adopting its policy prohibiting the early termination of analog operation, the Commission stated that its simulcasting policy (whereby stations must simulcast a certain percentage of their analog programming on their DTV stations) was premised on the idea that each licensee operate an analog and DTV station until the end of the transition period.³ Furthermore, the Commission noted that some viewers could be disenfranchised by licensee decisions removing their option to continue to watch over-the-air analog television until the end of the transition period.⁴ Permitting the early termination of KJLA(TV)'s analog service would result in the type of disenfranchisement the Commission was seeking to prevent when it adopted this policy.

Furthermore, KJLA(TV) provides unique Spanish-language programming that will no longer be available to its analog over-the-air viewers should we permit the station to discontinue operation on channel 57. Ventura and Los Angeles Counties contain sizable Hispanic populations (33.4% for Ventura and 44.6% for Los Angeles according to 2000 Census data). The loss of analog over-the-air Spanish-language programming could have a significant impact in these areas.

You further maintain that discontinuation of KJLA(TV)'s analog service will not have a negative impact on the pace of the DTV transition in the market. You state that discontinuing analog service will enable KJLA to concentrate its resources on commencing, expanding and improving its digital services. Although KJLA(TV)'s discontinuation of analog service may not affect the efforts of other stations in the Los Angeles market to convert to digital, you have not shown how the public interest will be served by a grant of your request. You have shown only that the private interests of the station will served, namely its ability to save money from its analog operation.

Finally, you argue that discontinuation of KJLA(TV)'s analog operations is consistent with Commission precedent. You cite three cases where the Commission permitted stations to terminate their analog operations.⁵ Each of those cases is distinguishable from the facts in this case. In *Goldvein*, *Twenty-Nine Palms* and *Atlantic City*, the stations were able to demonstrate that there would be no actual loss of analog over-the-air service. As we note above, the loss of service would be more significant in this case. Furthermore, in *Goldvein*, the station was a noncommercial educational station that had

³ See *Advanced Television Systems and Their Impact on the Existing Broadcast Television Service*, 12 FCC Rcd 12809, 12832-12833 (1997) (*R&O*); *recon.*, 13 FCC Rcd 6860, 6886-7 (1998) (*MO&O*).

⁴ *Id.*

⁵ See *WNVT-DT, Goldvein, Virginia*, DA 03-2845, released September 10, 2003 (*Goldvein*); *Twenty-Nine Palms, CA*, DA 03-1481, released May 1, 2003 (*Twenty-Nine Palms*); *WWAC-DT, DA 02-2478*, released October 3, 2002 (*Atlantic City*).

sustained a large operating loss. The station demonstrated that discontinuation of its analog operation was necessary to prevent it from having to sacrifice much of its unique noncommercial educational programming. No argument of financial hardship was advanced in this case.

Upon consideration of these factors and the unique combination of circumstances present in this case, and in accordance with our management of the digital television transition, we conclude that the public interest would not be served by allowing KJLA to terminate the analog operations of KJLA(TV).

Wherefore, the above facts considered, KJLA's request to discontinue analog operations IS DENIED.

Sincerely,

W. Kenneth Ferree
Chief, Media Bureau